

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE No.206223
Issued to: Hubert A. FREDERICKS

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2439

Hubert A. FREDERICKS

This appeal has been taken in accordance with 46 CFR 5.707.

By order dated 22 September 1986, an Administrative Law Judge of the United States Coast Guard at Norfolk, Virginia, revoked Appellant's license upon finding proved charges of negligence and misconduct. The negligence charge was supported by two specifications which alleged that Appellant, while serving as operator on board the M/V NATIVE SON, on or about 26 April 1986 negligently failed to keep clear while overtaking another vessel, and negligently crossed the bow of another vessel, thus endangering the life, limb and property of the passengers and crew aboard the two vessels. The misconduct charge was supported by two specifications which alleged that Appellant, while in preparation for a trip from St. Thomas, U. S. Virgin Islands to Tortola, British Virgin Islands, on or about 10 May 1986, failed to give a safety orientation prior to getting underway or to have placards posted as required by 46 CFR 185.25-1(d), and while acting in the same capacity on the same date failed to have on board and available for inspection his license as required by 46 CFR 185.10-1.

On 27 August 1986, Appellant filed a notice of appeal and requested a temporary license pending appeal. The Administrative Law Judge denied the request by order dated 18 September 1986.

BASES OF APPEAL

This appeal has been taken from the denial of a temporary license. Appellant has not filed a brief in support of his appeal. However, in his request for a temporary license to the Administrative Law Judge, Appellant contended that, prior to the initiation of these proceedings, he had held a Coast Guard license for thirteen years with a "clean" record, that he had not been found to have committed any offense enumerated in 46 CFR 5.61(a), and that he had been denied a fair and impartial hearing.

APPEARANCE: Charles B. Herndon, Esq., 5-6 Kongens Gade, P.O. Box 6647, St. Thomas, V.I. 00801

OPINION

A request for a temporary document is governed by the provisions of 46 CFR 5.707(c), which provides:

(c) A determination as to the request will take into consideration whether the service of the individual is compatible with the requirements for safety at sea and consistent with applicable laws. If one of the offenses enumerated in §5.61(a) has been found proved, the continued service of the appellant will be presumed not compatible with safety at sea, subject to rebuttal by the appellant.

Although Appellant has not been found to have committed "one of the offenses enumerated in §5.61(a)," the primary consideration is safety. Here, Appellant was the operator of a passenger vessel with 106 passengers aboard. The Administrative Law Judge found that, during a voyage between two islands, Appellant overtook another passenger vessel operated by a competing company with 80 passengers aboard, and for a period of approximately 2-3 minutes ran abreast of that vessel at a speed of approximately 20 knots, approximately 2 feet off her port side. Appellant then accelerated and cut across the bow of the other vessel at a distance of around three feet.

The Administrative Law Judge, in denying the issuance of a temporary license to Appellant, examined the record in light of the required considerations and concluded that Appellant's continued service on board American merchant vessels was incompatible with safety of life and property at sea. The Administrative Law Judge determined that Appellant's conduct as developed in the evidence constituted the highest degree of negligence and reflected a wanton disregard for his responsibilities.

There is nothing in the record before me on this appeal which would cause me to disturb the Administrative Law Judge's determination. The very highest standard of care is placed on vessel officers for the personal safety of passengers and crew. Appeal Decision 2257 (MALANAPHY).

CONCLUSION

Appellant has not established sufficient cause to disturb the order of the Administrative Law Judge denying him a temporary license and document.

ORDER

The order of the Administrative Law Judge denying Appellant a temporary document dated at Norfolk, Virginia, on 18 September 1986 is AFFIRMED.

J. C. IRWIN
Vice Admiral, U. S. Coast Guard
ACTING COMMANDANT

Signed at Washington, D.C. this 5 day of December 1986.